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Department of Justice

Washington

April 8, 1955

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Kelsey
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MEMORANDUM TO ALL GENERAL COUNSEL

OGC/LEGL Review Completed.

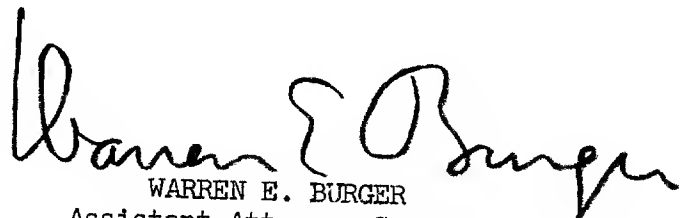
Subject: Foreign contracts

I have recently had occasion in the Department of Justice to run into three similar situations, each involving a contract suit by the United States in foreign courts.

1. In suing for a refund of advances made under a procurement contract in Portugal, local counsel pointed out to us that under Portuguese law the addition of an appropriate phrase in the original contract would have made the recipient of U. S. advances a trustee for their safe keeping and proper expenditure and would have given to the United States a prior lien on all equipment purchased with the fund. We were told that such a clause would have meant that in place of the extensive litigation and difficult collection questions involved, summary proceedings could have been had whereby all purchased equipment could have been seized and sold for our account and the trustees made personally accountable for the advances.
2. In a suit recently instituted by us in Germany on a contract with one firm, guaranteed by another, it was pointed out to us that no joint suit could be maintained against both because of the extremely limited geographical jurisdiction of the German courts--a limitation which could have been easily overcome in preparing the initial contract and guaranty by preconsent to suit in a single jurisdiction.
3. In connection with what promises to be a series of suits to be instituted in South Africa, local counsel have advised us that under their contract law the addition of a single phrase would have permitted us to go directly against an individual guarantor rather than facing the present necessary preliminary of taking judgments against the insolvent primary debtors.

I bring these incidents to your attention to indicate that it may be desirable in making any contract which may ultimately involve a foreign suit, to have an opinion of local counsel not only as to the substantive coverage of the contract itself but also with respect to procedural provisions which on default will accelerate court consideration, insure adequacy of liens, make available summary collection procedures and provide for selection of appropriate fora.

DOJ Review Completed.



WARREN E. BURGER
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